AMENDED IN SENATE JUNE 17, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL No. 1702

Introduced by Committee on Environmental Safety and Toxic Materials (Laird (Chair), Chu, Levine, Lieber, and Lowenthal)

February 25, 2003

An act to amend ~~Sections 25281, 25288, 25292,~~ *Section 15399.15 of the Government Code, and to amend Sections 25150.1, 25281, 25288, 25290.1, 25292, 25292.5,* 25293, 25295, 25295.5, 25298, ~~and 25299 of, and to add Section 25280.6~~ *25299, 25299.4, and 33459 of, and to add Sections 25280.6 and 25290.2* to, the Health and Safety Code, relating to ~~underground storage tanks~~ *hazardous substances, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1702, as amended, Committee on Environmental Safety and Toxic Materials. *Hazardous substances:* underground storage tanks*: redevelopment.*

(1) Existing law generally regulates the storage of hazardous substances in underground storage tanks and requires underground storage tanks that are used to store hazardous substances to meet certain requirements. These requirements are required to be implemented by the local agency. Under existing law, with specified exceptions, no person may own or operate an underground storage tank containing hazardous substances unless a permit for its operation has been issued. Existing law defines the term ''unauthorized release'' for purposes of these requirements to exclude a release that is authorized by the State Water Resources Control Board or a California regional board pursuant

to the Porter-Cologne Water Quality Control Act. Local agencies are required to take various actions with regard to an unauthorized release.

This bill would revise the definition of unauthorized release to delete the exclusion for releases authorized by the board or a regional board.

The bill would impose a state-mandated local program by imposing new duties upon local agencies with regard to enforcing the provisions regulating underground storage tanks.

(2) *Existing law establishes various requirements for an underground storage tank installed on or after July 1, 2003, including requirements that the underground tank system be designed and constructed with a continuous monitoring system capable of detecting the entry of the liquid- or vapor-phase of the stored hazardous substance and that the interstitial space of the underground storage tank be maintained under constant vacuum or pressure. A local agency is required to inspect every underground storage tank annually and determine whether the tank complies with those design and construction standards.*

This bill would delay the application of these requirements for an underground storage tank installed after July 1, 2003, to instead apply those requirements to an underground storage tank installed after July 1, 2004. The bill would require that an underground storage tank instead on or after July 1, 2003, and before July 1, 2004, meet all of those requirements, except for the requirements regarding the monitoring system capable of detecting the liquid- or vapor-phase and the maintenance of the interstitial space.

(3) Existing law authorizes the imposition of a civil penalty upon a owner of an underground tank system for, among other things, knowing failure to take reasonable and necessary steps to assure compliance by the operator of an underground tank system.

This bill would delete the authorization to impose that penalty and would provide that both the owner and the operator of an underground tank are responsible with complying with the requirements applicable to an owner or operator of an underground storage tank. The bill would make conforming changes.

~~(3)~~

The bill would also make conforming changes.

(4) The existing Polanco Redevelopment Act authorizes a redevelopment agency to take any action that the agency determines is necessary, consistent with other state and federal laws, to remedy or remove a release of hazardous substances on, under, or from a project

area, subject to specified conditions. Existing law immunizes an agency that remedies or removes a hazardous substance release, pursuant to those provisions, from liability under specified state laws, and authorizes the recovery of cleanup and remedial costs from the responsible party. Existing law defines the term "responsible party" as including, among other persons, a person subject to a cleanup or abatement order issued under the specified provisions of the Porter-Cologne Water Quality Control Act, which requires a person who discharges waste into the waters of this state in a specified manner or who threatens to create, a condition of pollution or nuisance, to clean up the waste, abate the effects of the waste, or take other necessary remedial action, upon order of the California regional water quality control board.

This bill would revise the definition of responsible party under the Polanco Redevelopment Act to delete the requirement that the person be subject to such a cleanup or abatement order.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(6) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ *2/3*. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. *Section 15399.15 of the Government Code is amended to read:*

15399.15. (a) The agency shall make grant funds available from the Petroleum Underground Storage Tank Financing Account to eligible grant applicants who meet all of the following eligibility requirements:

(1) The grant applicant is a small business, pursuant to the following requirements:

(A) The grant applicant meets the conditions for a small business *concern* as defined in Section 632 of Title 15 of the United States Code, and in the federal regulations adopted to

implement that section, as specified in Part 121 (commencing with Section 121.101) of Chapter I of Title 13 of the Code of Federal Regulations.

(B) The grant applicant employs fewer than 20 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation.

(2) The principal office of the grant applicant is domiciled in the state, and the officers of the grant applicant are domiciled in this state.

(3) The grant applicant, the applicant's family, or an affiliated entity, has owned or operated the project tank since January 1, 1997.

(4) All tanks owned and operated by the grant applicant are subject to compliance with Chapter 6.7 (commencing with Section 25280) of Division 20 of the Health and Safety Code, and the regulations adopted pursuant to that chapter.

(5) The facility where the project tank is located has sold at retail less than 900,000 gallons of gasoline annually for each of the two years preceding the submission of the grant application. The numbers of gallons sold shall be based upon taxable sales figures provided to the State Board of Equalization for that facility.

(6) The grant applicant owns or operates a tank that is in compliance with Section 25290.1*, 25290.2,* or 25291 of the Health and Safety Code, or subdivisions (d) and (e) of Section 25292 of the Health and Safety Code, and the regulations adopted to implement those sections.

(7) The facility where the project tank is located was legally in business retailing gasoline after January 1, 1999.

(b) Grant funds may only be used to pay the costs necessary to comply with the requirements of Section 25284.1, 25292.4, or 25292.5 of the Health and Safety Code.

(c) If the total amount of grant requests by eligible grant applicants to the agency pursuant to this section exceed, or are anticipated to exceed, the amount in the Petroleum Underground Storage Tank Financing Account, the agency may adopt a priority ranking list to award grants based upon the level of demonstrated financial hardship of the eligible grant applicant, or the relative impact upon the local community where the project tank is located if the claim is denied.

SEC. 2. Section 25150.1 of the Health and Safety Code is amended to read:

25150.1. The requirements in Sections 25290.1, *25290.2*, 25291, and 25292 apply to the construction, operation, maintenance, monitoring, and testing of underground storage tanks, as defined in subdivision (y) of Section 25281, that are required to obtain hazardous waste facilities permits from the department. The department shall adopt regulations implementing the requirements of Sections 25290.1, *25290.2,* 25291, and 25292, for regulating the construction, operation, maintenance, monitoring, and testing of underground storage tanks used for the storage of hazardous wastes that are necessary to protect against hazards to the public health, domestic livestock, wildlife, or the environment.

SEC. 3. Section 25280.6 is added to the Health and Safety Code, to read:

25280.6. Either the owner or operator of an underground storage tank may comply with the requirements of this chapter that apply to the owner or operator of an underground storage tank. Both the owner and the operator of an underground storage tank are responsible for complying with this chapter and if an underground storage tank is not in compliance with this chapter, both the owner and the operator of that underground storage tank are in violation of that requirement.

~~SEC. 2.~~

SEC. 4. Section 25281 of the Health and Safety Code is amended to read:

25281. For purposes of this chapter, the following definitions apply:

(a) ''Automatic line leak detector'' means any method of leak detection, as determined in regulations adopted by the board, that alerts the owner or operator of an underground storage tank to the presence of a leak. ''Automatic line leak detector'' includes, but is not limited to, any device or mechanism that alerts the owner or operator of an underground storage tank to the presence of a leak by restricting or shutting off the flow of a hazardous substance through piping, or by triggering an audible or visual alarm, and that detects leaks of three gallons or more per hour at 10 pounds per square inch line pressure within one hour.

(b) ''Board'' means the State Water Resources Control Board. ''Regional board'' means a California regional water quality control board.

(c) ''Compatible'' means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the tank system.

(d) (1) ''Certified Unified Program Agency'' or ''CUPA'' means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) ''Participating Agency'' or ''PA'' means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) ''Unified Program Agency'' or ''UPA'' means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, a UPA has the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 and the regulations adopted to implement those requirements. After a CUPA has been certified by the secretary, the UPA shall be the only local agency authorized to enforce the requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA. This paragraph shall not be construed to limit the authority or responsibility granted to the board and the regional boards by this chapter to implement and enforce this chapter and the regulations adopted pursuant to this chapter.

(e) ''Department'' means the Department of Toxic Substances Control.

(f) ''Facility'' means any one, or combination of, underground storage tanks used by a single business entity at a single location or site.

(g) ‘‘Federal act’’ means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), or as it may subsequently be amended or supplemented.

(h) ‘‘Hazardous substance’’ means either of the following:

(1) All of the following liquid and solid substances, unless the department, in consultation with the board, determines that the substance could not adversely affect the quality of the waters of the state:

(A) Substances on the list prepared by the Director of Industrial Relations pursuant to Section 6382 of the Labor Code.

(B) Hazardous substances, as defined in Section 25316.

(C) Any substance or material that is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class III-A combustible liquid.

(2) Any regulated substance, as defined in subsection (2) of Section 6991 of Title 42 of the United States Code, as that section reads on January 1, 1989, or as it may subsequently be amended or supplemented.

(i) ‘‘Local agency’’ means the local agency authorized, pursuant to Section 25283, to implement this chapter.

(j) ‘‘Operator’’ means any person in control of, or having daily responsibility for, the daily operation of an underground storage tank system.

(k) ‘‘Owner’’ means the owner of an underground storage tank.

(*l*) ‘‘Person’’ means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. ‘‘Person’’ also includes any city, county, district, the state, another state of the United States, any department or agency of this state or another state, or the United States to the extent authorized by federal law.

(m) ‘‘Pipe’’ means any pipeline or system of pipelines that is used in connection with the storage of hazardous substances and that is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

(n) ‘‘Primary containment’’ means the first level of containment, such as the portion of a tank that comes into

immediate contact on its inner surface with the hazardous substance being contained.

(o) ''Product tight'' means impervious to the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(p) ''Release'' means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils.

(q) ''Secondary containment'' means the level of containment external to, and separate from, the primary containment.

(r) ''Single walled'' means construction with walls made of only one thickness of material. For the purposes of this chapter, laminated, coated, or clad materials are considered single walled.

(s) ''Special inspector'' means a professional engineer, registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements of underground storage tanks.

(t) ''Storage'' or ''store'' means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for a period of years. ''Storage'' or ''store'' does not include the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or granted interim status under Section 25200.5.

(u) ''Tank'' means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials, including, but not limited to, wood, concrete, steel, or plastic that provides structural support.

(v) ''Tank integrity test'' means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the board.

(w) ''Tank tester'' means an individual who performs tank integrity tests on underground storage tanks.

(x) ''Unauthorized release'' means any release of any hazardous substance that does not conform to this chapter, including an unauthorized release specified in Section 25295.5.

(y) (1) ‘‘Underground storage tank’’ means any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground. ‘‘Underground storage tank’’ does not include any of the following:

(A) A tank with a capacity of 1,100 gallons or less that is located on a farm and that stores motor vehicle fuel used primarily for agricultural purposes and not for resale.

(B) A tank that is located on a farm or at the residence of a person, that has a capacity of 1,100 gallons or less, and that stores home heating oil for consumptive use on the premises where stored.

(C) Structures, such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits, sumps and lagoons. A sump that is a part of a monitoring system required under Section 25290.1, *25290.2*, 25291, or 25292 and sumps or other structures defined as underground storage tanks under the federal act are not exempted by this subparagraph.

(D) A tank holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be regulated by the board and any regional board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) to ensure that they do not pose a threat to water quality.

(z) ‘‘Underground tank system’’ or ‘‘tank system’’ means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

(aa) (1) ‘‘Unified program facility’’ means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements of paragraph (3) of subdivision (c) of Section 25404.

(2) ‘‘Unified program facility permit’’ means a permit issued pursuant to Chapter 6.11 (commencing with Section 25404), and that encompasses the permitting requirements of Section 25284.

(3) ‘‘Permit’’ means a permit issued pursuant to Section 25284 or a unified program facility permit as defined in paragraph (2).

~~SEC. 3.~~

SEC. 5. Section 25288 of the Health and Safety Code is amended to read:

25288. (a) The local agency shall inspect every underground tank system within its jurisdiction at least once every year. The purpose of the inspection is to determine whether the tank system complies with the applicable requirements of this chapter and the regulations adopted by the board pursuant to Section 25299.3, including the design and construction standards of Section 25290.1, *25290.2,* 25291, or 25292, whichever is applicable, whether the owner or operator has monitored and tested the tank system as required by the permit, and whether the tank system is in a safe operating condition.

(b) After an inspection conducted pursuant to subdivision (a), the local agency shall prepare a compliance report detailing the inspection and shall send a copy of this report to the permitholder and the owner or operator, if the owner or operator is not the permitholder. Any report prepared pursuant to this section shall be consolidated into any other inspection reports required pursuant to Chapter 6.11 (commencing with Section 25404), the requirements listed in subdivision (c) of Section 25404, and the regulations adopted to implement the requirements listed in subdivision (c) of Section 25404.

(c) In lieu of the annual local agency inspections, the local agency may require the permitholder to employ a special inspector to conduct the annual inspection. The local agency shall supply the permitholder with a list of at least three special inspectors that are qualified to conduct the inspection. The permitholder shall employ a special inspector from the list provided by the local agency. The special inspector’s authority shall be the same as that of the local agency as set forth in subdivision (a).

(d) Within 60 days after receiving a compliance report or special inspection report prepared in accordance with subdivision (b) or (c), respectively, the permitholder shall file with the local agency a plan to implement all recommendations contained in the compliance report or shall demonstrate, to the satisfaction of the local agency, why these recommendations should not be implemented. Any corrective action conducted pursuant to the

recommendations in the report shall be taken pursuant to Sections 25296.10 and 25299.36.

~~SEC. 4.~~

SEC. 6. Section 25290.1 of the Health and Safety Code is amended to read:

25290.1. (a) Notwithstanding subdivision (o) of Section 25281, for purposes of this section, ''product tight'' means impervious to the liquid and vapor of the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(b) Notwithstanding ~~Section~~ *Sections 25290.2 and* 25291, every underground storage tank installed on or after July 1, ~~2003~~ *2004*, shall meet the requirements of this section.

(c) The underground storage tank shall be designed and constructed to provide primary and secondary levels of containment of the hazardous substances stored in it in accordance with the following performance standards:

(1) Primary containment shall be product tight and compatible with stored product.

(2) Secondary containment shall be product tight and constructed to prevent structural weakening as a result of contact with any hazardous substances released from the primary containment, and also shall be capable of storing the hazardous substances for the maximum anticipated period of time necessary for the recovery of any released hazardous substance.

(3) Secondary containment shall be constructed to prevent any water intrusion into the system by precipitation, infiltration, or surface runoff.

(4) In the case of an installation with one primary tank, the secondary containment shall be large enough to contain at least 100 percent of the volume of the primary tank.

(5) In the case of multiple primary tanks, the secondary containment shall be large enough to contain 150 percent of the volume of the largest primary tank placed in it, or 10 percent of the aggregate internal volume of all primary tanks, whichever is greater.

(d) The underground tank system shall be designed and constructed with a continuous monitoring system capable of detecting the entry of the liquid- or vapor-phase of the hazardous substance stored in the primary containment into the secondary

containment and capable of detecting water intrusion into the secondary containment.

(e) The interstitial space of the underground storage tank shall be maintained under constant vacuum or pressure such that a breach in the primary or secondary containment is detected before the liquid- or vapor-phase of the hazardous substance stored in the underground storage tank is released into the environment. The use of interstitial liquid level measurement methods satisfies the requirements of this subdivision.

(f) The underground storage tank shall be provided with equipment to prevent spills and overfills from the primary tank.

(g) If different substances are stored in the same tank and in combination may cause a fire or explosion, or the production of flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container, those substances shall be separated in both the primary and secondary containment so as to avoid potential intermixing.

(h) Underground pressurized piping that conveys a hazardous substance shall be equipped with an automatic line leak detector.

(i) Before the underground storage tank is covered, enclosed, or placed in use, the standard installation testing requirements for underground storage systems specified in Section 2.4 of the Flammable and Combustible Liquids Code, adopted by the National Fire Protection Association (NFPA 30), as amended and published in the respective edition of the Uniform Fire Code, shall be followed.

(j) Before the underground storage tank is placed in use, the underground storage tank shall be tested after installation using one of the following methods to demonstrate that the tank is product tight:

(1) Enhanced leak detection.

(2) An inert gas pressure test that has been certified by a third party and approved by the board.

(3) A test method deemed equivalent to enhanced leak detection or an inert gas pressure test by the board in regulations adopted pursuant to this chapter. An underground storage tank installed and tested in accordance with this subdivision is exempt from the requirements of Section 25292.5.

(k) Notwithstanding Section 25281.5, for any system installed to meet the requirements of this section, those portions of vent

lines, vapor recovery lines, and fill pipes that are beneath the surface of the ground are ''pipe'' as the term is defined in subdivision (m) of Section 25281, and therefore part of the underground storage tank system.

SEC. 7. Section 25290.2 is added to the Health and Safety Code, to read:

25290.2. (a) Notwithstanding subdivision (o) of Section 25281, for purposes of this section, 'product tight' means impervious to the liquid and vapor of the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(b) Notwithstanding Section 25291, every underground storage tank installed on or after July 1, 2003, and before July 1, 2004, shall meet the requirements of this section.

(c) The underground storage tank shall be designed and constructed to provide primary and secondary levels of containment of the hazardous substances stored in it in accordance with the following performance standards:

(1) Primary containment shall be product tight and compatible with stored product.

(2) Secondary containment shall be product tight and constructed to prevent structural weakening as a result of contact with any hazardous substances released from the primary containment, and also shall be capable of storing the hazardous substances for the maximum anticipated period of time necessary for the recovery of any released hazardous substance.

(3) Secondary containment shall be constructed to prevent any water intrusion into the system by precipitation, infiltration, or surface runoff.

(4) In the case of an installation with one primary tank, the secondary containment shall be large enough to contain at least 100 percent of the volume of the primary tank.

(5) In the case of multiple primary tanks, the secondary containment shall be large enough to contain 150 percent of the volume of the largest primary tank placed in it, or 10 percent of the aggregate internal volume of all primary tanks, whichever is greater.

(d) The underground tank system shall be designed and constructed with a continuous monitoring system capable of detecting the entry of the hazardous substance stored in the

primary containment into the secondary containment and capable of detecting water intrusion into the secondary containment.

(e) The underground storage tank shall be provided with equipment to prevent spills and overfills from the primary tank.

(f) If different substances are stored in the same tank and in combination may cause a fire or explosion, or the production of flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container, those substances shall be separated in both the primary and secondary containment so as to avoid potential intermixing.

(g) Underground pressurized piping that conveys a hazardous substance shall be equipped with an automatic line leak detector and shall be tightness tested annually.

(h) Before the underground storage tank is covered, enclosed, or placed in use, the standard installation testing requirements for underground storage systems specified in Section 2.4 of the Flammable and Combustible Liquids Code, adopted by the National Fire Protection Association (NFPA 30), as amended and published in the respective edition of the Uniform Fire Code, shall be followed.

(i) Before the underground storage tank is placed in use, the underground storage tank shall be tested after installation using one of the following methods to demonstrate that the tank is product tight:

(1) Enhanced leak detection.

(2) An inert gas pressure test that has been certified by a third party and approved by the board.

(3) A test method deemed equivalent to enhanced leak detection or an inert gas pressure test by the board in regulations adopted pursuant to this chapter. An underground storage tank installed and tested in accordance with this subdivision is exempt from the requirements of Section 25292.5.

(j) Notwithstanding Section 25281.5, for any system installed to meet the requirements of this section, those portions of vent lines, vapor recovery lines, and fill pipes that are beneath the surface of the ground are "pipe" as the term is defined in subdivision (m) of Section 25281, and therefore part of the underground storage tank system.

SEC. 8. Section 25292 of the Health and Safety Code is amended to read:

25292. For every underground storage tank installed on or before January 1, 1984, and used for the storage of hazardous substances, the following actions shall be taken:

(a) On or before July 1, 1985, the owner or operator shall outfit the underground tank system with a monitoring system capable of detecting unauthorized releases of any hazardous substances stored in the tank system, and thereafter, the owner or operator shall monitor each tank system, based on materials stored and the type of monitoring installed.

(b) Provide a means for visual inspection of the tank system, wherever practical, for the purpose of the monitoring required by subdivision (a). Alternative methods of monitoring the tank system on a monthly, or more frequent basis, may be required by the local agency, consistent with the regulations of the board.

The alternative monitoring methods include, but are not limited to, the following methods:

(1) Tank integrity testing for proving the integrity of an underground tank system at time intervals specified by the board.

(2) A groundwater monitoring well or wells that are downgradient and adjacent to the underground tank system, vapor analysis within a well where appropriate, and analysis of soil borings at the time of initial installation of the well.

(3) A continuous leak detection and alarm system that is located in monitoring wells adjacent to an underground tank system and which is approved by the local agency.

(4) For monitoring tanks containing motor vehicle fuels, daily gauging and inventory reconciliation by the owner or operator, if all of the following requirements are met:

(A) Inventory records are kept on file for one year and are reviewed quarterly.

(B) The tank system is tested, using the tank integrity test at time intervals specified by the board and whenever there is a shortage greater than the amount which the board shall specify by regulation.

(C) If a pressurized pump system is connected to the tank system, the system has a leak detection device to monitor for leaks in the piping. The leak detection device shall be installed in a manner designed to resist unauthorized tampering and to clearly show by visual inspection if tampering has occurred. The leak detection device shall be tested annually, at a minimum, and all

devices found to be not performing in conformance with the manufacturer's leak detection specifications shall be promptly repaired or replaced.

(5) For monitoring underground tank systems that are located on farms and that store motor vehicle or heating fuels used primarily for agricultural purposes, alternative monitoring methods include the following:

(A) If the tank has a capacity of greater than 1,100 gallons but of 5,000 gallons or less, the tank shall be tested using the tank integrity test, at least once every three years, and the owner or operator shall utilize tank gauging on a monthly or more frequent basis, as required by the local agency, subject to the specifications provided in paragraph (7) of subdivision (c) of Section 2641 of Title 23 of the California Code of Regulations, as that section read on August 13, 1985.

(B) If the tank has a capacity of more than 5,000 gallons, the tank shall be monitored pursuant to the methods for all other tanks specified in this subdivision.

(c) The board shall develop regulations specifying monitoring alternatives. The local agency, or any other public agency specified by the local agency, shall approve the location and number of wells, the depth of wells, and the sampling frequency, pursuant to these regulations.

(d) On or before December 22, 1998, the underground storage tank shall be replaced or upgraded to prevent releases due to corrosion or spills or overfills for the underground storage tank's operating life.

(e) (1) All existing underground pressurized piping shall be equipped with an automatic line leak detector on or before December 22, 1990, and shall be retrofitted with secondary containment on or before December 22, 1998. Underground pressurized piping shall be tightness tested annually.

(2) Paragraph (1) does not apply to existing pressurized piping containing motor vehicle fuel, if the pipeline is constructed of glass fiber reinforced plastic, cathodically protected steel, or steel clad with glass fiber reinforced plastic, is equipped with an automatic line leak detector, and is tightness tested annually.

~~SEC. 5.~~

SEC. 9. Section 25292.5 of the Health and Safety Code is amended to read:

25292.5. (a) On or before January 1, 2005, the owner or operator of an underground storage tank system that is located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database, and that is not otherwise subject to subdivision (j) of Section 25290.1, *subdivision (i) of Section 25290.2*, or Section 25292.4, shall test the system once using an enhanced leak detection test. The enhanced leak detection test shall meet the requirements of subsection (e) of Section 2640 of, and Section 2644.1 of, Title 23 of the California Code of Regulations, as those regulations read on January 1, 2003, except that the requirement in those regulations to repeat the test every 36 months shall not apply.

(b) On or before June 1, 2003, the board shall notify the owner and operator of each underground storage tank system that is located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database, of the owner's and operators' responsibilities pursuant to this section. The board shall provide each local agency with a list of tank systems within the local agency's jurisdiction that are within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database.

(c) Notwithstanding subdivision (a), if the results of the enhanced leak detection test indicate that any component of the underground storage tank system is leaking liquid or vapor, the owner or operator shall take appropriate actions to correct the leakage, and the owner or operator shall retest the system using enhanced leak detection until the system is no longer leaking liquid or vapor.

SEC. 10. Section 25293 of the Health and Safety Code is amended to read:

25293. The owner or operator of the underground tank system shall monitor the tank system using the method specified on the permit for the tank system. Records of monitoring, testing, repairing, and closure shall be kept in sufficient detail to enable the local agency to determine whether the underground tank system is in compliance with the applicable provisions of this chapter, the regulations adopted by the board pursuant to Section 25299.3, and the permit issued for the operation of the tank system.

~~SEC. 6.~~

SEC. 11. Section 25295 of the Health and Safety Code is amended to read:

25295. (a) (1) Any unauthorized release which escapes from the secondary containment, or from the primary containment, if no secondary containment exists, increases the hazard of fire or explosion, or causes any deterioration of the secondary containment of the underground tank system shall be reported by the owner or operator to the local agency designated pursuant to Section 25283 within 24 hours after the release has been detected or should have been detected. A full written report shall be transmitted by the owner or operator of the underground tank system to the local agency within five working days of the occurrence of the release. The report shall describe the nature and volume of the unauthorized release, any corrective or remedial actions undertaken, and any further corrective or remedial actions, including investigative actions, which will be needed to clean up the unauthorized release and abate the effects of the release and a time schedule for implementing these actions.

(2) The local agency shall review the permit whenever there has been an unauthorized release or when it determines that the underground tank system is unsafe. In determining whether to modify or terminate the permit, the local agency shall consider the age of the tank, the methods of containment, the methods of monitoring, the feasibility of any required repairs, the concentration of the hazardous substances stored in the tank, the severity of potential unauthorized releases, and the suitability of any other long-term preventive measures which would meet the requirements of this chapter.

(b) In cooperation with the Office of Emergency Services, the board shall submit an annual statewide report by county, to the Legislature, of all unauthorized releases, indicating for each unauthorized release the operator, the hazardous substance, the quantity of the unauthorized release, and the actions taken to abate the problem.

(c) The reporting requirements imposed by this section are in addition to any requirements which may be imposed by Sections 13271 and 13272 of the Water Code.

~~SEC. 7.~~

SEC. 12. Section 25295.5 of the Health and Safety Code is amended to read:

25295.5. (a) For purposes of this chapter, an unauthorized release includes, but is not limited to, a spill or overfill of a hazardous substance that meets both of the following conditions:

(1) The spill or overfill occurs while the hazardous substance is being placed in an underground storage tank.

(2) The spill or overfill is due to the use of improper equipment, faulty equipment, operator error, or inattention or overfilling.

(b) A person who causes an unauthorized release of a hazardous substance specified in subdivision (a) shall immediately notify the owner or operator of the underground storage tank that a spill has occurred and the owner or operator shall comply with the requirements of Sections 25294 or 25295, whichever is applicable.

(c) A spill or overfill shall not qualify for funds provided pursuant to Section 25299.51.

~~SEC. 8.~~

SEC. 13. Section 25298 of the Health and Safety Code is amended to read:

25298. (a) No person shall abandon an underground tank system or close or temporarily cease operating an underground tank system, except as provided in this section.

(b) An underground tank system that is temporarily taken out of service, but which the owner or operator intends to return to use, shall continue to be subject to all the permit, inspection, and monitoring requirements of this chapter and all applicable regulations adopted by the board pursuant to Section 25299.3, unless the owner or operator complies with subdivision (c) for the period of time the underground tank system is not in use.

(c) No person shall close an underground tank system unless the person undertakes all of the following actions:

(1) Demonstrates to the local agency that all residual amounts of the hazardous substance or hazardous substances which were stored in the tank system prior to its closure have been removed, properly disposed of, and neutralized.

(2) Adequately seals the tank system to minimize any threat to the public safety and the possibility of water intrusion into, or runoff from, the tank system.

(3) Provides for, and carries out, the maintenance of the tank system as the local agency determines is necessary for the period of time the local agency requires.

(4) Demonstrates to the appropriate agency, which has jurisdiction over the site, that the site has been investigated to determine if there are any present, or were past, releases, and if so, that appropriate corrective or remedial actions have been taken.

~~SEC. 9.~~

SEC. 14. Section 25299 of the Health and Safety Code is amended to read:

25299. (a) Any operator of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) for each underground storage tank for each day of violation for any of the following violations:

(1) Operating an underground tank system which has not been issued a permit, in violation of this chapter.

(2) Violation of any of the applicable requirements of the permit issued for the operation of the underground tank system.

(3) Failure to maintain records, as required by this chapter.

(4) Failure to report an unauthorized release, as required by Sections 25294 and 25295.

(5) Failure to properly close an underground tank system, as required by Section 25298.

(6) Violation of any applicable requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.

(7) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(8) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(9) Tampering with or otherwise disabling automatic leak detection devices or alarms.

(b) Any owner of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) per day for each underground storage tank, for each day of violation, for any of the following violations:

(1) Failure to obtain a permit as specified by this chapter.

(2) Failure to repair or upgrade an underground tank system in accordance with this chapter.

(3) Abandonment or improper closure of any underground tank system subject to this chapter.

(4) Violation of any applicable requirement of the permit issued for operation of the underground tank system.

(5) Violation of any applicable requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.

(6) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(7) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(c) Any person who intentionally fails to notify the board or the local agency when required to do so by this chapter or who submits false information in a permit application, amendment, or renewal, pursuant to Section 25286, is liable for a civil penalty of not more than five thousand dollars ($5,000) for each underground storage tank for which notification is not given or false information is submitted.

(d) (1) Any person who violates any corrective action requirement established by, or issued pursuant to, Section 25296.10 is liable for a civil penalty of not more than ten thousand dollars ($10,000) for each underground storage tank for each day of violation.

(2) A civil penalty under this subdivision may be imposed in a civil action under this chapter, or may be administratively imposed by the board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(e) Any person who violates Section 25292.3 is liable for a civil penalty of not more than five thousand dollars ($5,000) for each underground storage tank for each day of violation.

(f) (1) Any person who falsifies any monitoring records required by this chapter, or knowingly fails to report an unauthorized release, shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) or more than ten thousand dollars ($10,000), by imprisonment in the county jail for not to exceed one year, or by both that fine and imprisonment.

(2) Any person who intentionally disables or tampers with an automatic leak detection system in a manner that would prevent the automatic leak detection system from detecting a leak or alerting the owner or operator of the leak, shall, upon conviction, be punished by a fine of not less than five thousand dollars

($5,000) or more than ten thousand dollars ($10,000), by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(g) In determining both the civil and criminal penalties imposed pursuant to this section, the board, a regional board or the court, as the case may be, shall consider all relevant circumstances, including, but not limited to, the extent of harm or potential harm caused by the violation, the nature of the violation and the period of time over which it occurred, the frequency of past violations, and the corrective action, if any, taken by the person who holds the permit.

(h) Each civil penalty or criminal fine imposed pursuant to this section for any separate violation shall be separate, and in addition to, any other civil penalty or criminal fine imposed pursuant to this section or any other provision of law, except that no civil penalty shall be recovered under subdivision (d) for violations for which a civil penalty is recovered pursuant to Section 13268 or 13350 of the Water Code. The penalty or fine shall be paid to the treasury of the local agency or state, whichever is represented by the office of the city attorney, district attorney, or Attorney General bringing the action. All penalties or fines collected by the board or a regional board or collected on behalf of the board or a regional board by the Attorney General shall be deposited in the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund, and are available for expenditure by the board, upon appropriation, pursuant to Section 13441 of the Water Code.

(i) Paragraph (9) of subdivision (a) does not prohibit the owner or operator of an underground storage tank, or his or her designee, from maintaining, repairing, or replacing automatic leak detection devices or alarms associated with that tank.

~~SEC. 10.~~

SEC. 15. Section 25299.4 of the Health and Safety Code is amended to read:

25299.4. (a) (1) Any local agency may apply to the board for authority to implement design and construction standards for the containment of a hazardous substance in underground storage tanks which are in addition to those set forth in this chapter. The application shall include a description of the additional standards and a discussion of the need to implement them. The board shall

approve the application if it finds, after an investigation and public hearing, that the local agency has demonstrated by clear and convincing evidence that the additional standards are necessary to adequately protect the soil and the beneficial uses of the waters of the state from unauthorized releases.

(2) The board shall make its determination within six months of the date of application for authority to implement additional standards. If the board's determination upholds the application for authority to implement additional standards, the standards shall be effective as of the date of the determination. If the board's determination does not uphold the application, the additional standards shall not go into effect.

(b) (1) Any permitholder or permit applicant may apply to the regional board having jurisdiction over the location of the permitholder's or applicant's facility for a site-specific variance from Section 25290.1, *25290.2,* 25291, or 25292. A site-specific variance is an alternative procedure which is applicable in one local agency jurisdiction. Prior to applying to the regional board, the permitholder shall first contact the local agency pursuant to paragraph (5).

(2) The regional board shall hold a public hearing 60 days after the completion of any documents required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The regional board shall consider the local agency's and the city's, county's, or city and county's recommendations in rendering its decision. Failure of the local agency or city, county, or city and county to join in the variance application pursuant to paragraph (5) shall not affect the request of the applicant to proceed with the variance application.

(4) The regional board shall approve the variance if it finds, after investigation and public hearing, that the applicant has demonstrated by clear and convincing evidence either of the following:

(A) Because of the facility's special circumstances, not generally applicable to other facilities' property, including size, shape, design, topography, location, or surroundings, the strict application of Sections 25290.1, *25290.2,* 25291, and 25292 is unnecessary to adequately protect the soil and beneficial uses of the waters of the state from an unauthorized release.

(B) Strict application of the standards of Sections 25290.1, *25290.2,* 25291, and 25292 would create practical difficulties not generally applicable to other facilities or property and that the proposed alternative will adequately protect the soil and beneficial uses of the waters of the state from an unauthorized release.

(5) Before applying for a variance, the applicant shall contact the local agency to determine if a site-specific variance is required. If the local agency determines that a site-specific variance is required or does not act within 60 days, the applicant may proceed with the variance procedure in subdivision (a).

(6) At least 30 days before applying to the appropriate regional board, the applicant shall notify and request the city, county, or city and county to join the applicant in the variance application before the regional board.

(A) The city, county, or city and county shall provide notice of the receipt of that request to any person who has requested the notice.

(B) The local agency within the city, county, or city and county which has the jurisdiction for land use decisions shall have 30 days from completion of any documents required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) to act on the applicant's request to join the applicant.

(c) Applicants requesting a variance pursuant to subdivision (b) shall pay a fee determined by the board to be necessary to recover the reasonable cost of administering subdivision (b).

(d) The permit issued for any underground storage tank issued a variance pursuant to subdivision (b) shall require compliance with any conditions prescribed by the board or a regional board in issuing the variance. The conditions prescribed by the board or regional board in the permit shall include any conditions necessary to assure compliance with any applicable requirements of the federal act.

(e) This section does not apply to or within any city or county ~~which~~ *that* was exempt from implementing this chapter as of December 31, 1984.

SEC. 16. Section 33459 of the Health and Safety Code is amended to read:

33459. For purposes of this article, the following terms shall have the following meanings:

(a) ‘‘Department’’ means the Department of Toxic Substances Control.

(b) ‘‘Director’’ means the Director of Toxic Substances Control.

(c) ‘‘Hazardous substance’’ means any hazardous substance as defined in subdivision (h) of Section 25281, and any reference to hazardous substance in the definitions referenced in this section shall be deemed to refer to hazardous substance, as defined in this subdivision.

(d) ‘‘Local agency’’ means a single local agency that is one of the following:

(1) A local agency authorized pursuant to Section 25283 to implement Chapter 6.7 (commencing with Section 25280) of, and Chapter 6.75 (commencing with Section 25299.10) of, Division 20.

(2) A local officer who is authorized pursuant to Section 101087 to supervise a remedial action.

(e) ‘‘Qualified independent contractor’’ means an independent contractor who is any of the following:

(1) An engineering geologist who is certified pursuant to Section 7842 of the Business and Professions Code.

(2) A geologist who is registered pursuant to Section 7850 of the Business and Professions Code.

(3) A civil engineer who is registered pursuant to Section 6762 of the Business and Professions Code.

(f) ‘‘Release’’ means any release, as defined in Section 25320.

(g) ‘‘Remedy’’ or ‘‘remove’’ means any action to assess, evaluate, investigate, monitor, remove, correct, clean up, or abate a release of a hazardous substance or to develop plans for those actions. ‘‘Remedy’’ includes any action set forth in Section 25322 and ‘‘remove’’ includes any action set forth in Section 25323.

(h) ‘‘Responsible party’’ means any person described in subdivision (a) of Section 25323.5 of this code or ~~any person specified in~~ subdivision (a) of Section 13304 of the Water Code ~~who is subject to an order issued pursuant to that section~~.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the

program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the waters of the state from releases of hazardous substances posed by leaking underground storage tanks and to clarify provision authorizing the redevelopment of hazardous substances release sites, thereby protecting public heath and safety and the environment, it is necessary that this act take effect immediately.

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